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U.S. DISTRICT COURT  
N.D. OF ALABAMA**Bradley**

February 3, 2025

**Via CM/ECF**Mr. Greer M. Lynch, Clerk of Court  
United States District Court for the Northern District of Alabama**RE:** Notice of Supplemental Authority, *Butler v. McHenry*, No. 1:24-cv-975-CLM

Dear Mr. Lynch,

I write to advise the Court of the Eleventh Circuit's recent decision in *Insurance Marketing Coalition Limited v. FCC*, --- F.4th ----, 2025 WL 289152 (11th Cir. Jan. 24, 2025), where the Eleventh Circuit vacated an FCC regulation that "attempt[ed] to redefine 'prior express consent'" because it impermissibly exceeded the FCC's statutory authority to implement the Telephone Consumer Protection Act. (*See* Slip Op. at 25; *see also id.* at 8 (explaining that the challenged FCC Order amended 47 C.F.R. § 64.1200(f)(9))).

In their opening summary judgment brief, Defendants challenged Plaintiffs' reliance on a case that "considered vacatur of an order granting a permit, not universal vacatur of a regulation." (Doc. 24 at 68). In vacating the FCC regulation, the Eleventh Circuit cited the **same** case to explain that vacatur "is the ordinary APA remedy." (Slip Op. at 25 (quoting *Black Warrior Riverkeeper, Inc. v. U.S. Army Corps. Of Eng'rs*, 781 F.3d 1271, 1290 (11th Cir. 2015))). Although the Court also remarked that vacatur falls within courts' equitable discretion, it nonetheless held that an agency regulation "exceeding statutory authority is a serious defect" for which vacatur is "appropriate." (*Id.*).

Vacatur of the ATF's Final Rule is likewise proper here. **First**, the Final Rule suffers the same "serious defect" of exceeding ATF's limited statutory authority and otherwise violates the APA and Constitution several times over. (*Id.* at 25). Just like the FCC, "[r]ather than respecting the line that Congress drew, the [ATF] stepped right over it." (*Id.* at 26). **Second**, the vacatur ordered by the Eleventh Circuit was no less "universal" (that is, not limited to the parties) than what Plaintiffs seek here. And **third**, because Defendants cannot show that any provision of the Final Rule is severable, the Court should vacate the entire Final Rule.

Respectfully submitted,

/s/ Chadwick LamarChadwick Lamar  
Counsel for Plaintiffs

cc: All counsel of record (via CM/ECF)